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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,070	01/28/2004	Thomas E. Donnelly	Alene0104	2242
23580	7590	09/20/2005	EXAMINER	
MESMER & DELEAULT, PLLC 41 BROOK STREET MANCHESTER, NH 03104			GREEN, BRIAN	
			ART UNIT	PAPER NUMBER
			3611	

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/766,070

Applicant(s)

DONNELLY, THOMAS E.

Examiner

Brian K. Green

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

The drawing for figure 3 filed on June 30, 2005 is objected to because in figure 3 the separated elements should be embraced by a single bracket. The applicant included brackets for each element of figure 3 which is confusing. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The new figure 7 filed on June 30, 2005 has not been approved since it contains new matter. Showing the slots (42) in the store display 40 is considered to be new matter, the location of the slots as well as the size of the slots is considered to be new matter, the size and thickness of the display is considered to be new matter, the dowels (44) are considered to be new

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matter, and the location of the slots (42) relative to the dowels (44) is considered to be new matter.

Since the new figure 7 has not been entered because of new matter the drawings still fail to show all of the claimed subject matter. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plurality of greeting card melters defined in claim 14 and the retail store display defined in claim 15 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The amendment filed June 30, 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The entire new paragraph [0029a] is considered to be new matter.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the applicant's admitted prior art on page 2, paragraph 0004 in view of Sunshine (U.S. Patent No. 3,214,010).

The applicant's admitted prior art in paragraph 0004 discloses the idea of molding wax tarts, wrapping the wax tarts within a clear plastic wrap, and placing a label on each wrapped tart. The applicant's admitted prior art in paragraph 0004 does not disclose making the packaging in the form of a panel enclosure consisting essentially of a shaped recess and a flange and a closure panel releasably secured against the panel enclosure. Sunshine shows in figures 1-6 a package comprising a panel enclosure (12-14) consisting essentially of a shaped recess (11) and a flange (16), a closure panel (20) releasably secured against the panel enclosure, and a molded wax body

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(18) having only a wax formulation disposed in a cavity defined by the shaped recess and the closure panel and substantially conforming to the shape of the cavity. In view of the teachings of Sunshine it would have been obvious to one in the art to modify the applicant's admitted prior art in paragraph 0004 by making the packaging in the form of a panel enclosure consisting essentially of a shaped recess and a flange and a closure panel releasably secured against the panel enclosure since this would allow the wax tarts to be molded in an easier and faster manner and would allow the wax tarts to be packaged in an easier, faster, and cheaper manner. The wax tarts disclosed by the applicant are considered to be block shaped so the panel enclosure would have to have a block shaped recess in order to allow the tart to be molded into the desired shape. The wax tarts are considered to be capable of being placed within a greeting card. Sunshine discloses in column 1, lines 41-44 the idea of placing indicia on the package would can be considered a greeting message, also in order to mold the wax into fruit tarts the recess in the enclosure would have to have the appropriate shape of the fruit, i.e. grapes, apple, etc. which is considered to be a greeting card design. In regard to claim 2, Sunshine shows in figure 5 a hanging opening (26). In regard to claims 3 and 4, the applicant's admitted prior art in paragraph 0004 discloses that it is known to place a fragrance and a color to wax and wax tarts. In regard to claim 5, Sunshine discloses in column 2, lines 8-10 the idea of making the panel enclosure from a transparent plastic material. In regard to claim 6, the shaped recess is considered to include a design since the recess is in the shape of the fruit being simulated, i.e. grapes, apple, orange, etc.

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Claims 7-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the applicant's admitted prior art on page 2, paragraph 0004 in view of Sunshine (U.S. Patent No. 3,214,010) as applied to claims 1-6 above and further in view of Knight (U.S. Patent No. 4,440,298).

Applicant's admitted prior art on page 2, paragraph 0004 in view of Sunshine disclose the applicant's basic inventive concept except for attaching the wax melter to a greeting card. Knight shows in figures 1-4 the idea of removably attaching a gift (9) to a greeting card by placing the gift within a pocket (see figure 4). In view of the teachings of Knight it would have been obvious to one in the art to modify applicant's admitted prior art on page 2, paragraph 0004 in view of Sunshine since this would allow the wax melter to be given as a gift in a more amusing, thoughtful, and aesthetically pleasing manner. In regard to claims 8,11,16, and 18, the shaped recess is considered to include a design since the recess is in the shape of the fruit being simulated, i.e. grapes, apple, orange, etc. In regard to claim 10, Sunshine shows in figure 5 a hanging opening (26). In regard to claims 12 and 19, Sunshine discloses in column 2, lines 8-10 the idea of making the panel enclosure from a transparent plastic material. In regard to claims 13 and 20, the applicant's admitted prior art in paragraph 0004 discloses that it is known to place a fragrance and a color to wax and wax tarts. In regard to claim 14, the applicant's admitted prior art on page 2, paragraph 0004 in view of Sunshine and Knight do not specifically disclose the use of a plurality greeting cards with wax melters. It would have been obvious to one in the art to provide a plurality of the greeting cards with wax melters therein since this would allow the cards to be given to people as gifts, sold in stores as gifts, and manufactured in a more cost efficient manner. In regard to claim 15, the examiner takes official

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notice that it is well known to place greeting cards in a retail store display. It would have been obvious to one in the art to modify the applicant's admitted prior art on page 2, paragraph 0004 in view of Sunshine and Knight by placing the greeting card and wax melter in a retail store display since this would allow the cards and melters to be sold in a better and more cost effective manner.

Response to Arguments

Applicant's arguments filed June 30, 2005 have been fully considered but they are not persuasive.

The applicant argues that the wax tarts of the admitted prior art are not sized for placement into a greeting card because they are too thick. The examiner disagrees since claim 1 only requires that the greeting card melter be sized "for" placement into a greeting card. Therefore, the greeting card melter only has to be capable of being placed within a greeting card. As broadly defined, the greeting card melter taught by the prior art in view of Sunshine "could" be placed within a greeting card.

The applicant argues that the patent to Sunshine is non-analogous art and the examiner is using impermissible hindsight to combine the references. The examiner disagrees since both the applicant's admitted prior art on page 2 and the Sunshine patent are directed to molding wax articles and providing packaging for the wax articles. The Sunshine patent provides the advantage of allowing the wax article to be both molded into a desired shape and packaged in an easier, faster, and more economical manner.

The applicant argues that since the wax tarts of the applicant's admitted prior art do not have the same shipping problems as Sunshine's wax gaskets, there would be no motivation to

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look to the packaging of Sunshine where damage to the wax tart during shipping does not affect its use. The examiner disagrees since the packaging of Sunshine provides additional benefits such as allowing the wax tarts to be packaged in an easier, faster, and more economical manner as well as to provide a more aesthetically pleasing package.

The applicant argues that no where in Knight is there a suggestion or motivation to include an object other than a garment such as a tee-shirt and neither the admitted prior art nor Sunshine provide the motivation to combine scented wax with a greeting card. The examiner disagrees since Knight discloses the idea of attaching a gift to a greeting card. The particular form of the gift is not important. The Knight patent is being used to show that it is known to combine a greeting card with a gift to achieve the advantage of giving a gift in a more amusing, thoughtful, and aesthetically pleasing manner.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (571) 272-6644. The examiner can normally be reached on M-F 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


BRIAN K. GREEN
PRIMARY EXAMINER

Bkg
Sept. 14, 2005